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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,136	01/20/2004	Brian L. Bettencourt	23844.00	6966
7590	04/29/2005		EXAMINER	
Richard C. Litman LITMAN LAW OFFICES, LTD. P.O. Box 15035 Arlington, VA 22215			MATTHEWS, TERRELL H	
			ART UNIT	PAPER NUMBER
			3654	

DATE MAILED: 04/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/759,136	BETTENCOURT, BRIAN L.	
	Examiner Terrell H. Matthews	Art Unit 3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) Claim(s) ____ is/are allowed.
- 6) Claim(s) 1-7 is/are rejected.
- 7) Claim(s) ____ is/are objected to.
- 8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 1/20/2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ . | 6) <input type="checkbox"/> Other: ____ . |

DETAILED ACTION

Claims 1-7 have been examined

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "mesh screen" of claim 5 l.5 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 5 line 5 states the invention contains a "mesh screen" however, it was not adequately described in the specification. .

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

The following title is suggested: Adjustable Sifting Device

The disclosure is objected to because of the following informalities: Tool is misspelled on pg.6 l.14.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "said mesh screen" in I.5. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Matsumoto. Although Matsumoto's invention sole purpose is not to serve as a "concrete coloring tool" it comprises the same parts and could carry out the same functions recited by claims 1-2 and 6.

Referring to claims 1 and 2, Matsumoto discloses a dirt remover as claimed. See Fig. 1 and respective portions of the specification. Matsumoto discloses a device that includes a handle (1), a frame (4), and a net (5), which is hung from the inner sides of the frame (4). Matsumoto also discloses that the handle (1) is attached to the frame (4) through a connecting member (15) in col.5 lines 52-53. Consequently, it is understood that the net (5) can be broadly construed as being a "flat, uniform perforated material enclosed inside the frame" as recited in claim 1. Matsumoto discloses as well in his patent that the frame (4) is made from aluminum as described in column 4, lines 38-39.

In regards to claim 6, Matsumoto, discloses the invention as described above in which the handle (1) is attached to the frame (4) via a connecting member (15) as discussed in col.5 lines 52-53. Matsumoto further states in col. 5 lines 65-66 that the handle (1) has an internal thread (19) and that the handle is then connected to the frame (4) by admitting the leading end of the connecting member (15) into the opening and turning the handle allowing the internal thread to bite and lock into the connecting member. Therefore, it is explicitly implied that the handle (1) is hollow as recited in claim 6 to accommodate being threaded into the connecting member.

Claims 1,4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Cheng. In Regards to claim 4-5, Cheng discloses a mesh container as claimed. See Fig. 3-3a and respective portions of the specification. Cheng discloses a mesh container that has a frame (12), sidewalls (58,60,62) and a handle rail (70). Cheng reveals in paragraph 9 l. 5 under the detailed description that the 'basket portion (55) is formed of "expanded metal plate (i.e., sheet metal) or "mesh" and has small openings 55a therein". Cheng reveals in paragraph 3 l. 4-5 under the detailed description that the "frame (12) has a rectangular shape", but indicates that invention is not limited to this frame shape.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Matsumoto in view of Vosbikian .

In regards to claim 3, Matsumoto discloses the invention as described above. Matsumoto does not disclose a "T-bracket having a mounting plate attached to one of the edges of the frame", a "socket pivotally mounted to the mounting plate", a "handle being mounted in the socket", or a " T-bracket having means for temporarily fixing the socket at an angular inclination" as recited in claim 3. However, Vosbikian discloses an invention as claimed. See Figs. 1-4, 9-11 and respective portions of the specification. Vosbikian discloses an invention inclusive of a bracket (40), a handle (70), a pan-base member (20), and holes (50,58,72). It should be noted that the pan-base member can be broadly construed as a "frame" and that the holes can be broadly construed for serving as a "socket". Vosbikian discloses that the bracket (40) is "rigidly fixed to the

base portion (20) and encompasses the end of handle (70)" in col. 7 lines 10-11 and that the "bracket and base member are pivotally coupled via the bracket on a pivot axis transverse to the handle" col. 7 lines 15-17. Vosbikian later details that the bracket (40) includes at least two locking means arranged for setting the joint to selected angles in col. 7 lines 51-53. Vosbikian states as well that, "a plurality of locking means can be provided to pivotally fix a handle, relative to the base at any position along the pivot axis", in col. 12 lines 23-26. Therefore, it would have been obvious at the time of the invention to a person of ordinary skill in the art to modify the apparatus of Matsumoto to include a bracket and a socket as a means for temporarily fixing the handle at an angular height as recited in claim 3. This connection of the handle to the frame of Matsumoto's invention would have been obvious to incorporate to allow particles to be removed by users of different heights or for use at different angles.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Matsumoto.

In regards to claim 7 Matsumoto, discloses that invention as described above. Matsumoto does not disclose an "aluminum pole threaded into the handle" as recited in claim 7. However, Matsumoto does describe a device that consists of handle (1) which has an internal thread (19) and by which the handle is then connected to the frame (4) by admitting the leading end of the connecting member (15) into the opening. Matsumoto also teaches that the turning of the handle will allow the internal thread to bite and lock into the connecting member. Therefore, it would have been obvious to a

person of ordinary skill in the art to thread an aluminum pole into the handle as taught by Matsumoto in which he threaded a handle into a connecting member that was attached to the frame. This would have been obvious to do in order to extend the length of the handle for situations in which it was required to reach farther.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Graham US Patent No. 4988005 discloses a sifting device with a handle attached to the frame, a steel blade, and a enclosed perforated material.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terrell H. Matthews whose telephone number is (571)272-5929. The examiner can normally be reached on M-F 8am - 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathy Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kathy Matecki
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